

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PURECHOICE INC.,)	
)	
Plaintiff(s),)	No. C08-80210 MISC JSW (BZ)
)	
v.)	
)	
JEFFREY MACKE,)	ORDER TRANSFERRING
)	PLAINTIFF'S MOTION TO
Defendant(s).)	COMPEL
)	

Before the court is plaintiff's motion to compel non-party Kathleen Macke to comply with subpoenas issued in this district in a lawsuit which is pending in the United States District Court for the District of Minnesota. Ms. Macke resides in this district.

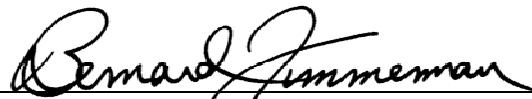
At a telephone conference held on October 31, 2008, at which all parties were represented by counsel, including Minnesota counsel, it became clear that this dispute is best resolved by the district court in Minnesota. The witness's principal objections to the subpoenas are that discovery is precluded by her settlement with plaintiff of an earlier Minnesota lawsuit and that the key documents plaintiff seeks

1 are protected by the attorney-client privilege. Both of these
2 issues are presently being litigated in the District of
3 Minnesota, thus creating the possibility of inconsistent
4 resolutions. During the telephone conference, when presented
5 with the possibility of transfer, all parties and the non-
6 party consented or did not object.

7 I am informed by the Honorable Susan R. Nelson, the
8 magistrate judge assigned to this matter in Minnesota, that
9 she is familiar with these issues and that this dispute should
10 be referred back to the District of Minnesota for resolution.

11 **IT IS THEREFORE ORDERED** that plaintiff's motion to compel Ms.
12 Macke to comply with the subpoenas issued in this District is
13 transferred to the United States District Court for the
14 District of Minnesota for resolution. Devlin v.
15 Transportation Communications International Union, 2000 WL
16 249286 (S.D.N.Y.), citing In re Digital Equipment Corp., 949
17 F.2d 228, 231 (8th Cir. 1991). Plaintiff shall renotice the
18 motion on Judge Nelson's calendar.

19 Dated: November 4, 2008

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22 Bernard Zimmerman
23 United States Magistrate Judge

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